

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THOMAS J. CAPANO,

Petitioner,

v.

Civ. Act. No. 06-58-***

THOMAS L. CARROLL,

Warden, and **JOSEPH R. BIDEN, III,**
Attorney General for the State of Delaware,

Respondents.

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Thomas J. Capano, has applied for federal habeas relief, challenging his 1999 conviction by a Delaware Superior Court jury for first degree murder. D.I. 1. By the terms of the Court's order of April 10, 2007, an answering brief is due to be filed on June 8, 2007. D.I. 30.

2. Counsel for respondents have been, and continue to be, diligently working on numerous cases before this Court and the state courts. However, the workload for the Appeals Division attorneys is currently very substantial. Counsel have been out of the office for significant amounts of time recently for a variety of reasons, including attending depositions in another case. In light of the situation, a short extension of time is needed to complete the brief.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment

to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondents' workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' second request for an extension of time to file an answering brief.

5. Respondents submit that an extension of time to and including June 22, 2007 in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Loren C. Meyers
Chief of Appeals Division
Del. Bar. ID No. 2210

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Del. Bar. ID No. 3759

Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

DATE: June 6, 2007

RULE 7.1.1 CERTIFICATION

I hereby certify that counsel for the petitioner, Joseph M. Bernstein, Esquire, has been contacted and he has no objection to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: June 6, 2007

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THOMAS L. CARROLL,

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Attorney General for the State of Delaware,

Respondents.

ORDER

This ____ day of _____, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer,
and

WHEREAS, it appearing to the Court that the requested extension is timely made and good
cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answering brief shall be filed on or before June
22, 2007.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2007, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF which will send notification of such filing to Joseph M. Bernstein, Esq.

/s/ Elizabeth R. McFarlan
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